IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

Crl.Rev.Pet.No. 1032 of 2000(B)

CRL.A.NO.52/1998 OF SESSIONS COURT, KASARAGOD,
C.C.NO.299/1996 OF JUDL. MAGISTRATE OF FIRST CLASS-II, HOSDURG.

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REVISION PETITIONER/APPELLANT/ACCUSED:

THOTTIYIL NARAYANI, AGED 50,
W/O. NARAYANAN, PANNITHADAM DESOM,
KINANOOR VILLAGE, HOSDURG TALUK.

BY ADV. SRI.M.THAMBAN,
SRI.RAJEEVAN. K,
SMT.T. SUDHAMONI,
SRI.DILIP MOHAN.

RESPONDENT/RESPONDENT/COMPLAINANT & STATE:

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1. **CIRCLE INSPECTOR OF EXCISE,**
   HOSDURG, HOSDURG TALUK.

2. **STATE OF KERALA, REP. BY**
   PUBLIC PROSCUTOR,
   HIGH COURT OF KERALA,
   ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. AMJAD ALI.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 10/09/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.R.P.No.1032 of 2000

Dated this the 10th day of September, 2007

O R D E R

The revision petitioner is the accused in C.C.No.299/96 with respect to the offence under Section 58 of Abkari Act and stands sentenced to undergo R.I. for one month and to pay a fine of Rs.15,000/- and in default, to undergo R.I. for one month.

2. The prosecution case is that on 30.10.1995 at about 1.30 p.m., the accused was found in possession of two litres of illicit arrack.

3. The evidence adduced in the matter consisted of the testimony of PWs' 1 to 3, Exts. P1 to P3 and MO1.

4. PW2, the independent witness did not support the prosecution as to the alleged detection but he has admitted the signature in the mahazar. It is PW1, the preventive officer, who detected the offence that has testified as to the incident. Nothing was brought out in the cross examination to discredit his version. Ext. P3 chemical analysis report showed that the sample contained 24.45% by volume of ethyl alcohol. Ext. P1 is the

seizure mahazar.

5. It is contended that at the time, the Government manufactured arrack was available. PW1 has testified that the standard prescribed for the Government manufactured arrack was 42.86% by volume of ethyl alochol. The evidence of PW1 that he tasted the contraband and it was found to be illicit was relied on by the court below. In view of the evidence of PW1 as well as considering the quantity of ethyl alcohol, I find that the court below was absolutely right in arriving at the conclusion that the contraband is illicit arrack. In the circumstances, I find no reason to deviate from the findings of the courts below. The conviction is confirmed.

6. Counsel for the revision petitioner has pleaded for leniency pointing out that the accused is a lady right now aged more than 57 and that more than 10 years have elapsed since the commencement of the proceedings. In the circumstances, the sentence is modified to imprisonment till the rising of the court and to pay a fine of Rs.15,000/- and in default, to undergo simple imprisonment for one month. The revision petitioner is granted

three months' time to remit the fine amount. She shall appear before the Judicial First Class Magistrate Court-II, Hosdurg on 10.12.2007 to receive the sentence.

The criminal revision petition is disposed of as above.

K.R.UDAYABHANU,
JUDGE

csl